

DOCUMENT RESUME

ED 222 989

EA 015 143

TITLE Diagnosis and Planning for the Handicapped Child.
School Management Handbook Number 3.

INSTITUTION National Association of Elementary School Principals,
Arlington, VA.

PUB DATE Jan 82

NOTE 24p.; For related documents, see EA 015 141-146.

AVAILABLE FROM Publications, National Association of Elementary
School Principals, 1801 North Moore Street,
Arlington, VA 22209 (Handbook Nos. 1-6 available only
as a set: \$50.00, non-members; \$30.00, members;
binder included).

PUB TYPE Guides - Non-Classroom Use (055)

EDRS PRICE MF01/PC01 Plus Postage.

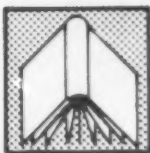
DESCRIPTORS Compliance (Legal); *Disabilities; Elementary
Education; Elementary School Students; Federal
Legislation; Federal Regulation; *Individualized
Education Programs; Parent Grievances; *Parent School
Relationship; School Responsibility

IDENTIFIERS *Education for All Handicapped Children Act

ABSTRACT

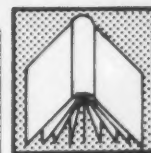
This part of the School Management Handbook provides elementary school administrators with an overview of the issues involved in complying with the requirements of Public Law 94-142, the Education for All Handicapped Children Act. The first section of the document discusses the law's background, the federal funding the law provides, which children are covered, and what schools and school districts must do in compliance. Describing the individualized education programs mandated by state and federal law for all handicapped students, the second section of the document touches on the program's content, its form, procedures for its preparation, and the role of parents in the program. Section 3 discusses the rights of parents in the handling of their handicapped children, including the right to be notified of changes in their children's educational programs and the right to an adequate hearing process if they do not find their children's educational programs acceptable. All three sections include specific recommendations for school policy regarding the treatment of handicapped students. (PGD)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *



Number 3

January 1982



SCHOOL MANAGEMENT HANDBOOK

Diagnosis and Planning for the Handicapped Child

Overview of the Law

Individualized Education Program

Working with Parents

For Further Information

Index

The subsequent issue of SCHOOL MANAGEMENT HANDBOOK, Issue 4, examines specific practical aspects of educating handicapped children: screening and evaluation, placement, curriculum and staffing, and related services.

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

X This document has been reproduced as
received from the person or organization
originating it.
Minor changes have been made to improve
reproduction quality.

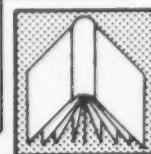
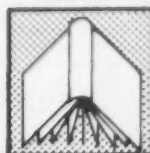
• Points of view or opinions stated in this docu-
ment do not necessarily represent official NIE
position or policy.

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

S. B. Zakariya

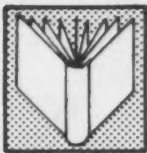
TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

Published by the National Association of Elementary School Principals
1801 North Moore Street, Arlington, Virginia 22209

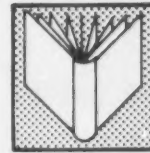


ED222989

EA 015 113



School Management Handbook



Copyright 1981, National Association of Elementary School Principals.
Material in the *School Management Handbook* has been reviewed and approved by a panel of school practitioners.

Review Panel

Elaine M. Banks, NAESP President
Pasco, Washington
Alfrieda M. Frost
Grosse Pointe Woods, Michigan
Ted Gary
Seattle, Washington
Dolores B. Hardison
Miramar, Florida
Daniel R. O'Shea
Grand Forks, North Dakota

Editors

Sally Banks Zakariya
Marilee C. Rist

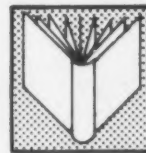
Consultant

Mitchell Lazarus

School Management Handbook is published bimonthly by the National Association of Elementary School Principals (NAESP). Subscription price, \$30 for NAESP members; \$35 for nonmembers.



School Management Handbook



3.1 OVERVIEW OF THE LAW

SUMMARY

The federal government offers money to the states for special education under PL 94-142, 20 U.S.C. §§ 1401 *et seq.* The amount depends on a count of handicapped children provided to the state by local districts. A state requesting the funds agrees to provide handicapped children with a "free appropriate public education" in accordance with federal requirements. These requirements, which apply also to local districts, cover the evaluation and identification of handicapped children, the planning and carrying out of their education, and "due process" rights for their parents.

EXCEPTION

New Mexico has chosen not to seek funds under PL 94-142, and so is exempt from that law's requirements. A federal court, while supporting the state's decision, has nonetheless held New Mexico to much the same standards of special education under Section 504 of the Rehabilitation Act of 1973 and its regulations, *New Mexico Association for Retarded Citizens v. New Mexico*, 495 F. Supp. 391 (D.N.M. 1980).

BACKGROUND

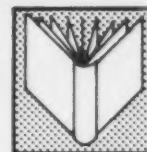
Prior to the passage of PL 94-142 in 1975, all states but two had already mandated special education for most of their handicapped children, many doing so under court order. Half the states had also begun to "mainstream" handicapped children into regular classrooms and to provide parents with due process rights.

PL 94-142 was intended to help the states meet financial obligations imposed by the courts. Educational standards under the act became effective in 1978, requiring some states to revise their practices substantially. Authorized funding began at a low level in 1977 with increases year by year after that. Congressional appropriations, however, have tapered off at about one-third of the authorized levels.

An earlier piece of federal legislation also has important implications for special education. Section 504 of the Rehabilitation Act of 1973 forbids programs that receive any federal support to discriminate against handicapped persons. Regulations accompanying Section 504 specify the education of handicapped children in detail, using standards similar to those in PL 94-142. All of the states are subject to these regulations, 45 C.F.R. §§ 84.31 *et seq.*



School Management Handbook



Overview of the Law--3.2

FEDERAL SUPPORT

The computation of federal funding under PL 94-142 does *not* depend on the excess costs of educating handicapped children. (Excess costs are those over and beyond the costs of educating nonhandicapped children.) Rather, the formula looks to the national average of the cost of educating all children, including handicapped children.

For every handicapped child, the state receives a nominal 12 percent of the per-pupil cost averaged nationally. In practice, however, the appropriation runs closer to 11 percent, owing to the government's underestimate of inflation. Moreover, excess costs are rising faster than are the costs of education generally, so the federal contribution represents a steadily shrinking fraction of the excess costs. There are also costs attached to federal compliance in record-keeping and reporting, which further reduce the net income from federal support.

Regulations specify that funds received under PL 94-142 can be used only to defray the excess costs of educating handicapped children, 45 C.F.R. §§ 121a.182 *et seq.* This federal money cannot be used to support educational expenses that are also shared by non-handicapped children.

In the end, PL 94-142 pays for only about 10 percent of the cost that its requirements impose on the schools. (Many of the states impose much the same requirements on their own initiative.) Funding beyond that 10 percent must come from the states and local districts. The courts, moreover, have consistently held that a local lack of funds is no excuse for failure to comply with the law in full, e.g., *Sherry v. New York State Education Department*, 479 F. Supp. 1328 (W.D.N.Y. 1979).

FREE APPROPRIATE PUBLIC EDUCATION

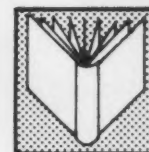
The central requirement in PL 94-142 obligates states and local districts to provide handicapped children with a "free appropriate public education."

"Free" means at no cost whatever to the parents, except for nominal fees charged to parents of all students, 45 C.F.R. § 121a.14(b)(1).

"Appropriate" means the provision of special education, along with related services that the child needs to benefit from special education, delivered in accordance with a written "individualized education program" (IEP), 45 C.F.R. § 121a.4. "Appropriate" does not imply the best education possible, but it does mean that the education and services must suit the needs of the individual child. Expense to the school system is not a consideration, however; for example, courts have required a few states to provide year-round education to children who would regress without it, *Battle v. Pennsylvania*, 629 F.2d 269 (3d Cir. 1980), or residential care where necessary, *Krueger v. New Castle County School*



School Management Handbook



Overview of the Law--3.3

District, 642 F.2d 687 (3d Cir. 1981).

"Public" means at public expense. A local district can opt to place a child in a private facility, but must then bear the full cost, even if the child must be supported in the facility year round, 45 C.F.R. § 121a.302; *Mahoney v. Administrative School District No. 1*, 601 P.2d 826 (Or. App. 1979).

"Education" includes academic instruction and physical education, 45 C.F.R. § 121a.307. For severely retarded children, it also includes training in self-sufficiency, *Battle v. Pennsylvania*, cited above. Some state courts, holding that custodial maintenance of ineducable, profoundly retarded children is not education, have required parents to contribute to their children's care, but there has been no such ruling under PL 94-142.

In short, PL 94-142 requires the schools to provide an education for handicapped children as similar as possible to that afforded to nonhandicapped children, regardless of the expense.

WHICH CHILDREN QUALIFY?

A handicapped child must be formally identified as such before either the child or the state can benefit from PL 94-142.

The act of identifying a child as handicapped has two consequences. First, the state may then claim federal funds for that child, and the local district can claim funds from the state. Second, the state and district immediately become obliged to educate the child in accordance with the act. A child who has not been identified is not entitled to special education under the act, even if he or she is, in fact, handicapped. The act does, however, impose an obligation on the schools to locate and promptly identify all handicapped children.

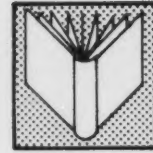
A child must meet two tests to qualify for identification. First, he or she must have a handicap mentioned in the list below; other handicaps do not count. Second, the child must require special education because the handicap "adversely affects the child's educational performance," 45 C.F.R. § 121a.5(a)-(b). A child does not qualify if his or her handicap poses no impediment in the regular classroom environment.

Only the following handicaps are covered by the act, 45 C.F.R. § 121a.5(b)(1)-(11):

- deaf
- deaf-blind
- hard of hearing
- mentally retarded
- multihandicapped



School Management Handbook



Overview of the Law--3.4

- orthopedically impaired
- other health impaired (limited strength, vitality, or alertness due to a variety of medical causes)
- seriously emotionally disturbed (broadly defined, but excludes some children who are "socially maladjusted")
- having a "specific learning disability" (broadly defined, but excludes children whose learning difficulties are primarily due to environmental, cultural, or economic disadvantage)
- speech impaired
- visually handicapped.

WHAT THE SCHOOLS MUST DO

By accepting funds under PL 94-142, the states become subject to a wide range of requirements. The act and its regulations make it clear that these obligations pass to the local districts as well, and from there to the building level. Responsibilities include the following:

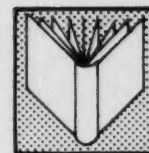
- screening of all children for handicaps, including children kept at home (to be discussed in Section 4.1)
- thorough evaluation of children in whom handicaps are suspected (Section 4.1)
- formal identification under PL 94-142 of those children whose schoolwork is, or will be, impaired by the handicaps listed above
- preparation of individualized education programs (IEPs) for children identified as handicapped (Section 3.2)
- appropriate placement of handicapped children in the least restrictive environment (Section 4.2)
- provision of special education, including physical education, in accordance with the IEP
- annual reevaluation
- extension of due process rights to parents (Section 3.3).

In addition, PL 94-142 requires the schools to provide certain noneducational "related services" to children who require them in order to benefit from special education. Related services under this mandate can include speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling, diagnostic medical services, school health services, social work services, and parent counseling and training, 45 C.F.R. § 121.113(a). See Section 4.4.

When a school, district, or state fails to provide special education and related services in compliance with the law, some courts, though not all, allow the child to collect



School Management Handbook



Overview of the Law--3.5

financial damages. Any court, however, will issue an injunction ordering full compliance when the parents make an adequate case.

FEDERAL AND STATE REQUIREMENTS

Federal support for special education under PL 94-142 goes to the state. Local districts must apply to the state for their share, and in so applying, become subject to the law's educational requirements. But even districts that do not apply are subject to the full range of requirements, so long as their state accepts the funding.

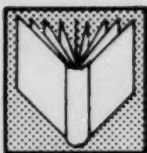
Every school district is subject to two sets of laws on special education: those of the federal government, and those of the state in which the district is located. *Sometimes federal and state laws disagree*, in, for example, due process procedures or the contents of an IEP. Several states have rewritten their special-education laws to conform to PL 94-142, thus avoiding any conflict. In other states, however, educators can be subject to discrepant requirements.

Where state and federal laws differ, the courts will generally try to enforce both. In practice this imposes on the schools the more stringent provisions of each law.

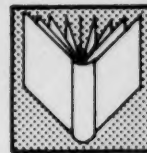
Sometimes federal and state laws contradict each other so much that enforcement of both is not possible. In that situation, federal law prevails, and the courts strike down the offending portion of the state law, *Vogel v. School Board*, 491 F. Supp. 989 (W.D. Mo. 1980).

RECOMMENDATIONS

1. Every state and local school official whose responsibilities include any degree of oversight over special education should be thoroughly familiar with the major provisions of PL 94-142 and its regulations.
2. The state is responsible for enforcing compliance with PL 94-142 at the district level. State officials should maintain a comprehensive reporting program to ensure that local districts are operating in accordance with the law. So far as possible, the reporting system should make use of forms that districts must file anyway, to minimize the districts' paperwork burden.
3. Likewise, district officials should maintain a systematic review of practices at the building level.
4. Parents suing under PL 94-142 have won most of their cases. Many such disputes arise when an educator goes against the law in what he or she sees as the child's best interests, or when school officials seek to avoid expenses far out of proportion to the benefits they confer. Obtain experienced legal advice before knowingly overstepping the law in its smallest detail, no matter how reasonable the action may seem.



School Management Handbook

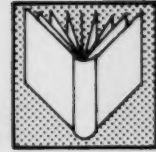


Overview of the Law--3.6

5. Even when a school system is in the right on all substantive issues, it is still vulnerable in court when it has failed to comply fully with the due process requirements outlined in Section 3.3. Those requirements should be followed with special care.



School Management Handbook



3.2 INDIVIDUALIZED EDUCATION PROGRAM

SUMMARY

Every handicapped child requires an individualized education program (IEP) in writing, prepared in accordance with federal and state law.

BACKGROUND

To qualify for funds under PL 94-142, states and districts must agree to provide handicapped children with a "free appropriate public education." PL 94-142 further specifies that a free appropriate public education must be provided in accordance with an IEP. This makes the IEP an indispensable element under the law.

CONTENTS OF AN IEP

The following items must be included in every IEP, 45 C.F.R. § 121a.346. (For clarity, some items combined in the regulation are separated here.)

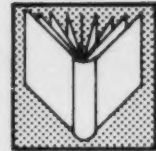
1. the child's present levels of educational performance
2. annual goals for the child, including short-term instructional objectives for each goal
3. the type of special education program to be provided to the child (see Section 4.2)
4. related services to be provided to the child (see Section 4.4)
5. the extent to which the child will be able to participate in regular educational programs
6. specific projected dates for the initiation of services, and expected duration of the services
7. objective criteria and schedules for evaluation (at least annually) to determine whether the short-term instructional objectives are being met.

The IEP must also specify the child's physical education program if it is different from that for nonhandicapped children. Note that a child who spends part of his or her time in a regular school, and whose IEP makes no mention of physical education, is automatically entitled to participate in the school's regular physical education program, 45 C.F.R. § 121a.307(b).

The above requirements are only a minimum. Some states require, and schools may add, anything else that could be useful. The following are examples of other items sometimes



School Management Handbook



Individualized Education Program--3.8

included in IEPs:

- architectural renovations on the child's behalf
- the child's special transportation needs
- assistance the child may need in eating lunch, using the bathroom, etc.
- names of persons responsible for providing particular services to the child
- need for bilingual education
- anticipated barriers to achieving the objectives sought
- estimated costs.

Some local districts make it a practice to specify on the IEP whether or not the child can be suspended for disciplinary reasons. Handicapped children have special disciplinary protections, however. It is very doubtful that an item in the IEP, by itself, is enough to overcome those protections and allow suspension of a handicapped child. More extensive procedures are usually necessary. These are outlined in Section 2.5.

FORM OF THE IEP

In addition to the federal IEP requirements outlined above, most states have their own regulations on what an IEP must contain. Some states specify very general formats, with only three or four headings. Others are extremely detailed, ranging up to twenty or so items that must be included. Some insist on information missing entirely from the federal version--for example, the child's transportation needs.

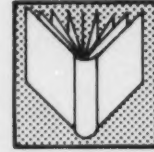
Local districts may also impose their own requirements on the IEP, though not all do. Once local requirements are in place, they should not be changed unnecessarily. Changes that are too extensive or too frequent can necessitate inservice programs merely on filling out the IEP.

Every IEP must satisfy the federal requirements, those of the state in which it is used, and those of the local district, if any. The safest course is to use whichever form calls for more detail, and also to ensure that the form includes all information asked for locally and under both federal and state law.

Language in the IEP must serve two distinct purposes: to inform parents, and to guide professional delivery of the child's special education and related services. The dual purposes can be difficult to reconcile. Parents need clear explanations in lay terms, while professionals look for more technical specifications that most parents will not understand. It is advisable to include the same information in both forms. For example, the IEP must include objective criteria for evaluation. This item would ordinarily name certain tests and specify expected levels of performance. In addition, however, there should be a brief explanation for parents of what the test measures, and a description



School Management Handbook



Individualized Education Program--3.9

of the skills that the expected level of performance would indicate.

The task of preparing an IEP that fully meets the needs of both parents and professionals has significant cost implications. Considering, however, that legal challenges under PL 94-142 most often arise over the IEP, the expense may prove to be a good investment.

PROCEDURES FOR PREPARING THE IEP

Preparation of the IEP can come only after an evaluation of the kind to be outlined in Section 4.1.

Regulations require that the school call a meeting to write the child's first IEP, and meetings annually thereafter to review it. The school must ensure that the following people attend the IEP meeting, 45 C.F.R. § 121a.344(a):

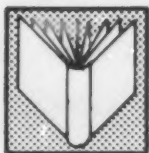
- the child's teacher (special education teacher or regular classroom teacher)
- another school representative who will provide or supervise the child's special education (the principal is recommended)
- one or both parents
- "the child, where appropriate"
- anyone else whom the school or the parents wish to have present (including attorneys).

If the child has been evaluated for the first time, a member of the evaluation team must also attend, or else one of the school personnel present must be familiar with the child's evaluation procedures and results, 45 C.F.R. § 121a.344(b).

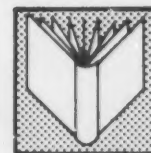
Ideally the IEP should be drawn up at the meeting itself. Many districts skirt the law by writing the IEP ahead of time; at the meeting, school personnel explain it to parents and request their signature. Some districts further risk legal challenge by maintaining a stock of preprinted IEPs, merely choosing one and writing the child's name across the top. Neither practice is recommended. It is acceptable, however, to prepare a rough draft of the IEP in advance for discussion with parents at the meeting, so long as parents understand that the draft is for convenience only and that their contributions are welcome.

ROLE OF THE PARENTS

An IEP for a child's first placement in a special education program requires the written consent of at least one parent. For the consent to be valid, the parent must understand the contents of the IEP. The person who signs the IEP can be a natural parent, legal guardian, or someone "acting as a parent," such as a grandparent or stepparent, 45 C.F.R. § 121a.10. When no parent can be identified or located, or when the child is a ward of the state, the state or the school must appoint a "surrogate parent" who is not a school



School Management Handbook



Individualized Education Program--3.10

system employee, 45 C.F.R. § 121a.514.

Following the initial placement, the parent's attendance at subsequent IEP meetings is still required, but parental approval of revised IEPs is not required, 45 C.F.R. § 121a.504(b)(2). Instead, any changes in the child's program require notice to the parent, and the parent must have an opportunity to object. See Section 3.3.

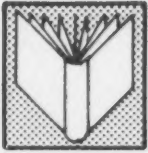
Federal regulations give parent participation in the IEP meetings a very high priority. The school must notify parents of the meeting in plenty of time, must schedule the meeting at a mutually agreed upon time and place, and must conduct the meeting by telephone if necessary. When the parents cannot be convinced to attend, the meeting proceeds without them; but the school must first compile a record of its efforts to secure the parent's presence through telephone calls, correspondence, and visits to the parent's home or workplace, 45 C.F.R. § 121a.345.

The school also has the responsibility of ensuring that parents understand what transpires at the IEP meeting and of providing translators for parents who are deaf or whose native language is not English, 45 C.F.R. § 121a.345(e).

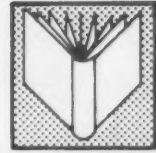
Parents are under no obligation to sign the IEP or its subsequent versions, and once they have signed, they can revoke their approval at any time. See Section 3.3 for the procedures schools must use in the event of parental disapproval.

RECOMMENDATIONS

1. Develop a standard form for IEPs that includes spaces for all information required under federal law, as outlined above, and under state law and local requirements as well.
2. Consider carefully the question of physical education in preparing every IEP. If the child cannot take part in the school's regular physical education program, the IEP must provide for physical education tailored to the child's needs.
3. Make certain that all required school personnel attend the IEP meeting. At a minimum there must be two: one of the child's teachers, and someone else who will deliver or supervise the child's special education, preferably the principal. The first IEP meeting requires someone familiar with the evaluation procedures and results, possibly necessitating a third person as well.
4. Make every reasonable attempt to ensure that at least one parent attends the IEP meeting. In some instances it is necessary to telephone the parents repeatedly or to visit them in person. The regulations expect this kind of effort. If the parents cannot be persuaded to attend, and if your state allows it, invite a grandparent, stepparent, or another close relative who can reasonably protect the child's interests.



School Management Handbook

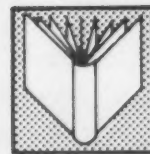


Individualized Education Program--3.11

5. At the initial IEP meeting, keep in mind that the parent's written consent to the placement is essential. Try to develop a sense of partnership between the parent and the school. Avoid overwhelming the parent with technical data. Speak positively of the child, stressing his or her strengths. Remember that some parents carry a sense of guilt about their child's handicap; where possible, speak favorably about the parent's past accomplishments in working with the child.
6. Avoid taking the attitude that the school knows best. Acknowledge the parent's special insights into his or her child, and listen respectfully to any suggestions offered. When the suggestions are inappropriate, explain why in nontechnical language.
7. Sometimes parents request services that the school system is not required or able to provide. Before making a firm refusal, make certain that the service is not required by law. See Section 4.4 for guidelines.
8. The parent should understand that the meeting establishes the child's program for the coming year, and should understand what that program will be.
9. If the parent's native language is not English, or if the parent is deaf, arrange for a translator.
10. Inform the parent that he or she need not sign the IEP, and review the parents' rights outlined in Section 3.3. Often it is wise to make this statement early in the meeting, when it can help to establish an atmosphere of trust.
11. If the parent brings an attorney to the IEP meeting, the school should bring an attorney also, but generally not otherwise.
12. Make certain that the IEP itself is comprehensible to a lay reader. Give the parent a copy.



School Management Handbook



3.3 WORKING WITH PARENTS

SUMMARY

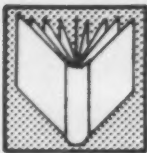
PL 94-142 gives parents extensive due process rights. These include the right to notice from the school concerning any change in the child's education and the right to a hearing and a series of appeals.

OVERVIEW OF PARENTS' RIGHTS

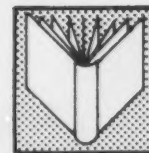
Throughout this section, the term "parent" means not only a parent, but also a guardian or a person acting as a parent, such as a stepparent or grandparent, 45 C.F.R. § 121a.10. One parent is enough. If no parent can be identified or located, or if the child is a ward of the state, the school must appoint a surrogate parent who is not an employee of the school system.

The following is a brief overview of parents' rights under PL 94-142. Most items are discussed further in this section.

1. *Records.* The parent can examine all educational records concerning these matters, 45 C.F.R. § 121a.502:
 - the child's identification as handicapped
 - evaluation
 - educational placement
 - special education
 - related services.
2. *Independent evaluation.* If dissatisfied with the school's evaluation of the child, the parent can have an independent evaluation performed, in some circumstances at public expense, 45 C.F.R. § 121a.503(a). See below.
3. *Consent and prior notice.* A child's first evaluation and first educational placement both require parental consent, 45 C.F.R. § 121a.504(b)(1). Parents must be notified of any subsequent changes in the evaluation or placement and must have an opportunity to object, 45 C.F.R. § 121a.504(a),(c). See below.
4. *Due process hearing.* In the event of a disagreement between the parent and the school, either can request a due process hearing before an impartial officer, 45 C.F.R. § 121a.506(a). See below.
5. *Administrative appeal.* Either the parent or the school can appeal the outcome of a due process hearing to the state educational agency, 45 C.F.R. § 121a.510(a). See



School Management Handbook



Working with Parents--3.14

below.

6. *Court action.* Following the administrative appeal, either side can take the dispute into state or federal court, 45 C.F.R. § 121a.511. Further legal appeals can follow. See below.

See also the outline of parents' rights concerning the child's individualized education program (IEP) in Section 3.2.

INDEPENDENT EVALUATION

If a parent disagrees with the school's evaluation of the child, he or she can obtain an independent evaluation. This is, in effect, a "second opinion"--a second evaluation conducted by someone who is not employed by the school system, 45 C.F.R. § 121a.503(a)(3)(i).

The school must pay for the independent evaluation. The school can, however, initiate a due process hearing (see below) to show that its own earlier evaluation was appropriate.

If the hearing officer agrees, then the parent is still entitled to the independent evaluation, but at his or her own expense, 45 C.F.R. § 121a.503(b).

An evaluation at public expense must be performed according to the same criteria, and by people with equivalent qualifications, as the school uses in conducting its own evaluation. These criteria do not apply when the parent pays for an independent evaluation, but the school must still take the results into account in all subsequent decisions concerning the child, 45 C.F.R. § 121a.503(c). On request, the school must tell parents where they can obtain an independent evaluation, 45 C.F.R. § 121a.502(a)(2).

CONSENT AND PRIOR NOTICE

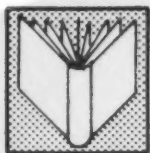
PL 94-142 requires parents' written consent for only two steps in a child's education, 45 C.F.R. § 121a.504(b):

1. the evaluation before the child's first placement
2. the first placement itself, in a program providing special education and related services.

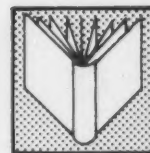
Parental consent is not required at subsequent stages. Instead the parent must be notified of changes in the child's program and be given an opportunity to object by way of a due process hearing. See below.

Specifically, the parent must have written notice before the school makes any change in the following, 45 C.F.R. § 121a.504(a)(1):

- a child's identification as handicapped
- evaluation



School Management Handbook



Working with Parents--3.15

- educational placement
- special education
- related services.

Likewise, notice is required when the school refuses to change any of the above, 45 C.F.R. § 121a.504(a)(2).

Even with these guidelines, it is not always obvious when notice to the parents is needed. As a rule, there must be notice when there is any change in the child's program that reflects in the IEP or when there is any change in the IEP itself. (See Section 3.2.) Notice is not generally needed for other kinds of changes. For example, a federal appeals court has ruled that a change of schools, even with adjustments in a child's program, does not require notice if the "type of program" remains the same, *Concerned Parents v. New York City Board of Education*, 629 F.2d 751 (2d Cir. 1980).

Whenever given, a notice must include the following elements, 45 C.F.R. § 121a.505(a):

- a full explanation of the parents' rights outlined in this section
- a description of the action the school proposes or refuses to take
- an explanation of why the school proposes or refuses to take the action
- a description of any options the school has considered, with the reasons why they were rejected
- a description of each evaluation procedure, test, record, or report that the school used in reaching its decision
- a description of any other relevant factors.

The notice must be in language that the general public can understand, *and must be in the parent's native language* "unless it is clearly not feasible to do so." If the parent cannot read in any language, the school must communicate the information orally and ensure that the parent understands it, 45 C.F.R. § 121a.505(b),(c).

Some schools that were otherwise in the right have encountered trouble in court because their notices to parents were defective. The guidelines above should be followed closely.

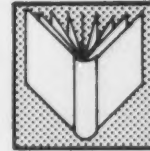
DUE PROCESS HEARING

The due process hearing is the central mechanism in PL 94-142 for resolving disputes between parents and schools concerning the education of handicapped children. A string of other proceedings may follow, but the outcome of the due process hearing can strongly influence the final outcome of the dispute.

Starting with the parent's request for a due process hearing, the child's placement cannot be changed until the dispute is finally resolved, unless the parent and school



School Management Handbook



Working with Parents--3.16

agree otherwise, 45 C.F.R. § 121a.513(a). There is one exception. If the dispute concerns the child's admission to public school, the child must be admitted, with the parent's consent, while the proceedings run their course, 45 C.F.R. § 121a.513(b).

The due process hearing is ordinarily conducted by the local school district, although it can also be conducted by the state educational agency. Federal regulations defer to state law on this question.

Where state policy allows it, the district can suggest mediation before the due process hearing. Sometimes mediation can resolve the differences inexpensively and in a relatively friendly atmosphere. The mediator, unlike a due process hearing officer, can be a school system employee, though he or she must not be otherwise involved in the particular case. Mediation cannot, however, be used to deny the parent a due process hearing, nor may it delay the hearing, 45 C.F.R. § 121a.506, *Comment*.

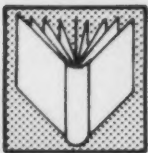
The due process hearing officer--that is, the person who makes the decision at the hearing--cannot be a school system employee or have any personal or professional connection with the case, though the district may pay for his or her services as a hearing officer. The district must keep a list of its hearing officers and their qualifications, 45 C.F.R. § 121a.507.

The due process hearing is, in effect, a miniature trial. Both the school and the parent have the following rights, 45 C.F.R. § 121a.508(a):

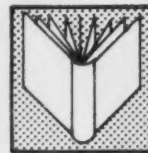
- to have attorneys present, and to receive their advice
- to have experts in special education present, and to receive their advice
- to know five days in advance what evidence the other side will present, and to block any evidence not so disclosed
- to present any evidence previously disclosed to the other side
- to compel the attendance of witnesses
- to cross-examine witnesses
- to have a transcript or a recording of the hearing
- to have a written opinion from the hearing officer that includes the facts he or she arrived at and the decision in the case.

In addition, the parent, but not the school, has the right to have the child present and to open the hearing to the public, 45 C.F.R. § 121a.508(b).

A final decision must be reached, and a copy of the decision must be mailed to each side, within 45 days of the time that the parent first requested a hearing. The hearing officer can grant a specific extension of time if either side requests it, 45 C.F.R. § 121a.512(a), (c).



School Management Handbook



Working with Parents--3.17

Presumably any mediation must take place within the same 45-day period.

ADMINISTRATIVE APPEAL

Following a due process hearing, either side can appeal the outcome to the state educational agency, 45 C.F.R. § 121a.510(a). Exception: this step is not possible if the state agency itself conducted the hearing appealed from.

The state official who decides the appeal must do the following, 45 C.F.R. § 121a.510(b):

- examine the entire record of the original due process hearing
- make sure that the hearing was conducted in accordance with the rules outlined above
- seek additional evidence, if necessary; at such an evidentiary hearing, both sides again have the rights they had at the original hearing, as listed above
- give both sides the opportunity to present their arguments orally, in writing, or both, at the official's discretion
- make an independent decision as to which side should prevail
- give both sides a written copy of his or her findings and decision.

COURT ACTION

Following a proceeding at the state level--either the original due process hearing if the state conducted it, or a state appeal of a local hearing--either side can appeal to the courts.

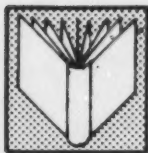
The state courts automatically have jurisdiction over such a dispute, and PL 94-142 also gives the federal courts jurisdiction over cases arising under the act, 20 U.S.C.

§ 1415(e)(4). The large majority of cases under PL 94-142 have been heard in the federal courts.

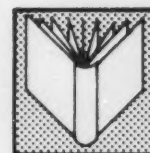
PL 94-142 requires a parent to exhaust the administrative appeals before going to court. That is, a court will not ordinarily hear a parent's case until the state educational agency has ruled against the parent, *Harris v. Campbell*, 472 F. Supp. 51 (E.D. Va. 1979). Sometimes, however, a court will determine that state proceedings would be futile, and will take the case without them, *Monahan v. Nebraska*, 645 F.2d 592 (8th Cir. 1981).

Once the case goes into court, it starts all over again, for all practical purposes. While the court must receive the records of the due process hearing and any administrative appeal, 20 U.S.C. § 1415(e)(2), it will ordinarily hear the evidence and witnesses from the beginning. The court, moreover, can reach its own independent decision as to the child's proper placement, *Anderson v. Thompson*, 495 F. Supp. 1256 (E.D. Wis. 1980).

A court decision can always be appealed at least once to a higher court. After a



School Management Handbook



Working with Parents--3.18

decision in a federal district court, the case would go next to the U.S. Court of Appeals for the circuit in which the district court sits. A petition for review by the U.S. Supreme Court can follow. State cases under PL 94-142 also can be appealed to the U.S. Supreme Court, once they have been ruled upon by the highest state court.

Again, the child's placement cannot be changed until the parent and school reach agreement or until all of these appeals have been exhausted.

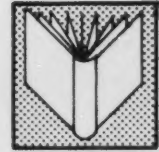
RECOMMENDATIONS

Extensive due process proceedings can be costly and disruptive to school systems. Except in rare circumstances, the goal should be to make them unnecessary. The two best safeguards are (1) to foster a feeling of cooperative effort with parents on their children's behalf, and (2) to meet all of the legal requirements at every stage.

1. Make every effort to locate at least one parent for every handicapped child. If no parent can be identified or found, seek a close relative who can reasonably protect the child's interests.
2. If no parent or relative is available, or if the child is a ward of the state, appoint someone to act as a surrogate parent, and extend to that person all rights that would ordinarily go to a parent. The surrogate parent cannot be a school system employee, but can be paid for his or her services as a surrogate parent.
3. Keep careful records of evaluations, IEP meetings, and all other matters pertaining to each handicapped child. Maintain these records until the child is twenty-one. Give parents free access to their children's records, scheduling appointments in the evening or on weekends if necessary. Under a ruling outside PL 94-142, a divorced parent without legal custody should have access equal to that of the custodial parent.
4. Maintain a list of qualified persons from whom parents can obtain independent evaluations. Make the list freely available to parents.
5. Note that encouraging a parent to seek an independent evaluation will sometimes give the parent enough confidence in the school to forgo the independent evaluation.
6. When a parent moves to begin an independent evaluation, promptly call a due process hearing on the question of who will pay for it. Otherwise the evaluation will automatically be at public expense.
7. Following an independent evaluation, even one at the parent's expense, place the report in the child's file and consider it in all subsequent decisions concerning the child.
8. Be sure that notices to parents are given when required and that they contain all of the information outlined above. The parent is entitled to be notified "a reasonable time" before the school takes any action concerning the child. There should be time

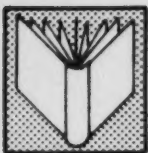


School Management Handbook

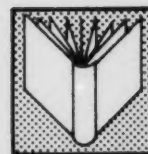


Working with Parents--3.19

- enough for the parent to obtain legal and other expert advice--at least a week.
9. Make every effort to communicate meaningfully with the parent. Keep a list of people who can translate written notices into the non-English languages used in your community. Where necessary, communicate with parents orally, and through a translator if needed. "Oral" communication with a deaf parent may have to be through a sign-language translator.
 10. If a parent refuses to consent where consent is needed, or indicates an intention to object to a notice, seek an informal meeting. Try to keep the meeting from turning adversarial. A sense of cooperation--of shared concern for the child's well-being--will be far more productive.
 11. Keep all explanations in ordinary lay terms. If technical words are unavoidable, be sure to explain them. Many parents resent the use of specialized jargon on the part of school officials.
 12. If the meeting does not produce agreement, suggest mediation to the parent. Give the parent a veto over possible mediators; otherwise, the mediation is unlikely to be successful.
 13. When a due process hearing seems inevitable, reconsider the school's position carefully. Expense and inconvenience begin to mount with the due process hearing. This is true also when the child's placement becomes "frozen" pending a resolution. Try to develop possible compromises to which the parent might agree.
 14. In the period preceding a due process hearing, keep the channels open. Most parents, like the school, would rather avoid a hearing. Sometimes compromise can be reached at the last minute, even in the meeting room before the hearing begins.
 15. Keep in mind the 45-day limit between the request for a due process hearing and the hearing officer's decision. Any attempt to delay unnecessarily can spell trouble in subsequent appeals. Thus, any meetings or mediation must be scheduled quickly.
 16. Keep a list of qualified due process hearing officers. They must not be school system employees. To minimize problems in any later appeals stemming from improper procedure at the hearing, it may be wise to appoint attorneys who have had some experience with PL 94-142.
 17. Always have an attorney (besides the hearing officer) present at a due process hearing to advise the school. If the attorney has not handled such a case before, inform him or her well in advance that the hearing will be conducted in accordance with 20 U.S.C. § 1415 and 45 C.F.R. § 121a.500 *et seq.*
 18. Make the strongest possible case at the due process hearing. Do not depend on later appeals. The party that prevails at the due process hearing has an advantage in any subsequent proceedings.
 19. Be aware of the unfavorable publicity that can flow from a dispute over a handicapped

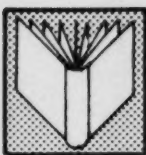


School Management Handbook

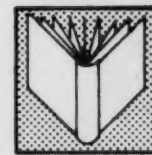


Working with Parents--3.20

child. It is rarely wise for the school to initiate publicity; but if the parent does so, the school may also have to make its case in the press. If the school district has a public relations department, its personnel can be very helpful in controlling the damage from bad publicity.



School Management Handbook



INDEX TO ISSUE 3

Anderson v. Thompson, 3.17

Appeals

handicapped students, 3.13, 3.14, 3.17-18, 3.19

Attorneys

handicapped students, 3.9, 3.11, 3.16, 3.19

Battle v. Pennsylvania, 3.2-3

Concerned Parents v. New York City Board of Education, 3.15

Costs

handicapped students, 3.2-3

Court action

handicapped students, 3.14, 3.17-18

Discrimination

handicapped students, 3.1

Due process

handicapped students, 3.1, 3.4, 3.5-6, 3.9-10, 3.13-20

Due process hearing, 3.13, 3.14, 3.15-17, 3.19

hearing officer, 3.16, 3.19

Evaluation

of handicapped students, 3.1, 3.4, 3.7, 3.8, 3.9, 3.13, 3.14, 3.15, 3.18

see also Issue 4

Free appropriate public education, 3.1, 3.2-3, 3.7

Handicapped students

appeals, 3.13, 3.14, 3.17-18

costs, 3.2-3, 3.8

court action, 3.14, 3.17-18

discipline, 2.23-26, 3.8

discrimination, 3.1

due process, 3.1, 3.4, 3.5-6, 3.9-10, 3.13-20

evaluation, 3.1, 3.4, 3.7, 3.8, 3.9, 3.13, 3.14, 3.15, 3.18

identification, 3.1, 3.3-4, 3.13, 3.14

independent evaluation, 3.13, 3.14, 3.18

individualized education program, 3.7-11

mediation, 3.16-17, 3.19

parents' rights, 3.13-20

PL 94-142 generally, 3.1-6

placement, 3.4, 3.13, 3.14-15, 3.15-16, 3.18-19

private placement, 3.3

publicity, 3.19-20

qualifying handicaps, 3.3-4

records, 3.13, 3.18

related services, 3.2, 3.4, 3.7, 3.11, 3.14-15

school year, 3.2-3

screening, 3.4

state requirements, 3.5, 3.10

see also specific topics; Issue 4

Harris v. Campbell, 3.17

Identification of handicapped students, 3.1, 3.3-4, 3.13, 3.14

Independent evaluation of handicapped students, 3.13, 3.14, 3.18

Individualized education program (IEP)

contents, 3.7-8

cost, 3.9

discipline, 3.8

form, 3.8-9

generally, 3.7-11

local requirements, 3.5, 3.10

meeting, 3.9-10, 3.10-11, 3.18

notice of change, 3.15

physical education, 3.3, 3.7, 3.10

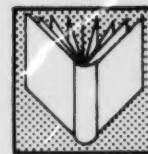
procedures, 3.9

requirement for, 3.2, 3.4

state requirements, 3.5, 3.8, 3.10



School Management Handbook



see also Issue 4

Kruelle v. New Castle County School District,
3.2-3

Mahoney v. Administrative School District, 3.3

Mainstreaming, 3.1

see also Issue 4

Mediation

handicapped students, 3.16-17, 3.19

Monahan v. Nebraska, 3.17

New Mexico Association for Retarded Citizens

v. New Mexico, 3.1

Parents

of handicapped children, 3.8-9, 3.9-10,
3.10-12, 3.13-20

separated, 3.9, 3.10, 3.13, 3.18

surrogate, 3.9, 3.13, 3.18

Physical education

handicapped students, 3.3, 3.7, 3.10

Placement of handicapped children, 3.4, 3.13,
3.14-15, 3.15-16, 3.18-19

Publicity

handicapped students, 3.19-20

Records

handicapped students, 3.13, 3.18

Rehabilitation Act of 1973, 3.1

Related services to handicapped students, 3.2,

3.4, 3.7, 3.11, 3.13, 3.14-15

see also Issue 4

School year

handicapped students, 3.2-3

Section 504, 3.1

Sherry v. New York State Education Department,

3.2

Special education

see Handicapped students; specific topics;

see also Issue 4

Vogel v. School Board, 3.5